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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 KATHERINE KING, Personal
9 Representative of the Estate of LMK, a
10 minor,

11 Plaintiff,

12 v.

13 THE UNITED STATES OF AMERICA
14 and DOYON SECURITY SERVICES,
15 LLC,

16 Defendants.

CASE NO. C11-5355BHS

ORDER GRANTING IN PART
AND DENYING IN PART
MOTION TO INTERVENE

17 This matter comes before the Court on Kenneth King's ("Mr. King") motion to
18 intervene (Dkt. 34). The Court has reviewed the briefs filed in support of and in
19 opposition to the motion and the remainder of the file and hereby grants in part and denies
20 in part the motion for the reasons stated herein.

21 **I. PROCEDURAL HISTORY**

22 On May 6, 2011, Katherine King ("Ms. King"), as the personal representative of
23 LMK, filed a complaint for wrongful death against the United States of America
24 ("Government") and Doyon Security Services, LLC ("Doyon"). Dkt. 1. The complaint
25 alleges that the Government and Doyon allowed a private in the Army to bring LMK onto
26 Fort Lewis Military Base in violation of certain base policies. *Id.* LMK subsequently
27 passed away in the barracks on the base. *Id.* Ms. King alleges causes of action on behalf
28 of the estate of LMK as a result of Defendants' negligent acts. *Id.*

1 On November 9, 2011, Ms. King sent Mr. King, LMK's father, a notice of lawsuit
2 pursuant to RCW 4.24.010. Dkt. 28, Declaration of Kenneth King, Exh. A. Although
3 Ms. King has not explicitly asserted a cause of action in her individual capacity under
4 RCW 4.24.010, she informed Mr. King that he "must join" in the lawsuit or else his rights
5 to recover under RCW 4.24.010 will be barred. *Id.*

6 On November 15, 2011, Mr. King filed a motion to intervene to protect his right in
7 the wrongful death action. Dkt. 26. On November 28, 2011, the Government responded.
8 Dkt. 31. On November 30, 2011, Doyon responded. Dkt. 32. On December 2, 2011,
9 King replied to both responses. Dkts. 33 & 34.

10 II. DISCUSSION

11 A. Motion to Strike

12 Mr. King moves to strike, or disregard, Doyon's response because it was filed one
13 day late. Dkt. 34 at 1. The Court denies Mr. King's motion because Mr. King has not
14 shown any prejudice as a result of the untimely filing.

15 B. Motion to Intervene

16 Fed. R. Civ. P. 24 provides intervention as a matter of right and permissive
17 intervention. King argues that he should be allowed to intervene under both standards.
18 Dkt. 26. The Government argues that Mr. King's claims are barred because he failed to
19 exhaust his administrative remedies under 28 U.S.C. § 2401(b). Dkt. 31. Doyon argues
20 that, if Mr. King's claims against the Government are dismissed, then the Court should
21 decline to exercise supplemental jurisdiction under 28 U.S.C. 1367. Dkt. 32.

22 1. Intervention of Right

23 To intervene as a matter of right under Fed. R. Civ. P. 24(a)(2), the applicant must
24 claim
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26 an interest relating to the property or transaction which is the subject of the
27 action and [that] the applicant is so situated that the disposition of the action
28 may as a practical matter impair or impede the applicant's ability to protect

1 that interest, unless the applicant's interest is adequately represented by
2 existing parties.

3 In particular, the Ninth Circuit requires the applicant to demonstrate that four
4 circumstances exist: (1) the applicant has a significant protectable interest relating to the
5 property or transaction that is the subject of the action; (2) the disposition of the action
6 may, as a practical matter, impair or impede the applicant's ability to protect its interest;
7 (3) the application is timely; and (4) the existing parties may not adequately represent the
8 applicant's interest. *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir.
9 2004). The party seeking to intervene bears the burden of showing that all the
10 requirements for intervention have been met. *Id.*

11 In this case, Mr. King has failed to show that he has an interest in the current
12 action that is not adequately protected. Based on Ms. King's complaint, the causes of
13 action are brought as a personal representative of the estate of LMK. Although Mr. King
14 is an heir to the estate, there is no evidence that Ms. King would not adequately represent
15 the estate or that Mr. King would not recover his portion of the estate according the
16 intestate distribution statute. Therefore, the Court denies Mr. King's motion to intervene
17 as a matter of right.

18 **2. Permissive Intervention**

19 An applicant who seeks permissive intervention must prove that he meets three
20 threshold requirements: (1) the applicant shares a common question of law or fact with
21 the main action; (2) the motion is timely; and (3) the court has an independent basis for
22 jurisdiction over the applicant's claims. *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th
23 Cir. 1998).

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25 In this case, Mr. King has met the requirements for permissive intervention. First,
26 it is undisputed that Mr. King's causes of action share the same question of law and fact,
27 namely Defendants' negligence as a cause of LMK's death. Second, there is no evidence
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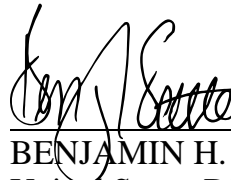
1 in the record that Mr. King's motion is untimely. Third, the Court has a separate basis for
2 jurisdiction based on diversity jurisdiction: Mr. King alleges that he is a citizen of
3 Washington, Doyon's corporate disclosure statement asserts that it is a wholly-owned
4 subsidiary of an Alaska corporation, and, although Mr. King does not allege a specific
5 amount of damages, Ms. King seeks damages of ten million dollars. Therefore, the Court
6 grants Mr. King's motion for permissive intervention.

7 The Court recognizes that Mr. King's claims against the Government may be
8 "subject to dismissal" for failure to exhaust. The issue, however, is more appropriate for
9 a fully briefed dispositive motion.

10 **III. ORDER**

11 Therefore, it is hereby **ORDERED** that Mr. King's motion to intervene is
12 **GRANTED in part** and **DENIED in part** as stated herein. Mr. King shall file his
13 complaint as a separate entry on the electronic docket within five days.

14 DATED this 13th day of December, 2011.

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18 BENJAMIN H. SETTLE
19 United States District Judge
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